IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 2252 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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YOGESH RAMANBHAI PATEL AND ANOTHER
Versus
MAHENDRAKUMAR RANCHHODBHAI AND OTHERS

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Appearance :
Mr Deep D Vyas for the petitioners
Mr Pandya for respondents Nos.1 to 4

RULE SERVED for Opponent(s) : 5,7 - 11.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 27/03/2006

ORAL JUDGMENT

By filing this revision application under Section 115 of the Civil Procedure Code, the petitioners – original defendants

Nos.9 and 10 of Special Civil Suit No.32 of 1995 have prayed that the order passed by the trial Court below Exhibit 274 may be quashed and set aside. Learned advocate Mr Pandya who is appearing for the respondents has pointed out that in a suit filed by respondents Nos.1 to 4 herein a preliminary decree was passed by the trial Court. He submitted that the said suit was filed for partitioning the joint family property. In the aforesaid suit a preliminary decree was passed by the trial Court on 20th December 1991. The present petitioners thereafter submitted an application at Exhibit 274 on the ground that at the relevant time defendants nos.9 and 10 were minors and no prayer was made by the original plaintiff to appoint guardian for defendants nos.9 and 10 and that the suit proceeded against the minors without any summons or notice tot he natural guardian of defendants nos.9 and 10. Under the circumstances, a prayer was made on behalf of the petitioners that the matter maybe heard de novo against the concerned defendants. The original defendants resisted the said application by filing reply on various grounds. The learned trial Judge after considering the arguments of both the sides ultimately dismissed the said application by his order dated 18.11.1995 against which this revision application is filed.

Learned advocate Mr Pandya submitted that against the original preliminary decree a first appeal was already filed being First Appeal No.7264 of 1995. He submitted that said appeal is now transferred to District Judge and the same is pending. When the original decree is already under challenge before the appellate forum, in my view, instead of entertaining this application, the appropriate remedy to the petitioners

would be to take all the points which are raised in this revision application before the appellate Court where the appeal filed against the preliminary decree is pending. The present respondents are also at liberty to take all available points and the appellate Court shall deal with all the points raised before it and decide the appeal on its own merits.

In view of the aforesaid observations and directions, this revision application stands disposed of. Rule is discharged. Interim relief is vacated.

However, at the request of the learned advocate for the petitioner, interim relief granted earlier is extended for a period of three weeks from today.

(P.B.Majmudar, J.)

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